
Status of Video Game under the USA and Indian Copyright

*Mohammad Rasikh Wasiq*¹

*Sayed Hadi Sadat Nasiri*²

Abstract

The intricacy and segmentation of video games, as well as specific issues with a particular video like trademark registration and directly protected content like sound effects, cause a variety of legal difficulties and challenges for the IPR system. Video game legal protection is a highly complicated issue right now.³ Despite the fact that video games are covered by copyright protection by Berne Convention Article 2. In accordance with national laws of the member states, video games are likewise protected; this is necessary in the age of innovation and technology.⁴ These days' video games have audiovisual aspects and software that work with various game mechanics.⁵ Licensed innovation regulations like copyright are particularly challenged by video games. This section of the essay examines how courts use the conventional copyright laws as they relate to video games.⁶ The notion that video games could be intellectual property is the sole issue with them. Players of video games view the games as creative works of art and use all of their imaginations while playing. Players' uniqueness and aggressiveness are off-balanced by the ability to play another person's game as though it were their own in video games.⁷

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¹ Student of ILS Law College, Pune

Email: mohammadrasikhwasiq@gmail.com

² Independent author- email: sayedhadiasadatnasiri@gmail.com

³ Hashimy, S.Q. (2022) Protection of video games under Indian and the United States of America copyright law, SSRN. Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4138875 (Accessed: February 14, 2023).

⁴ Lunsford, Christopher (Fall 2013). "Drawing a Line between Idea and Expression in Videogame Copyright: The Evolution of Substantial Similarity for Videogame Clones". *Intellectual Property Law Bulletin*. 18 (1): 87–118.

⁵ Hashimy, Sayed Qudrat, Protection of Video Games under Indian and the United States of America Copyright Law (June 17, 2022). *Indian Journal of Law and Legal Research Volume IV Issue II | ISSN: 2582-8878*, Available at

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⁶ Circuit., United States Court of Appeals, Third (1982-08-02). "685 F2d 870 Williams Electronics Inc v. Arctic International Inc". *F2d* (685): 870.

⁷ Hashimy, S.Q. (no date) Protection of video games under Indian and the United States of America ... Available at: https://www.researchgate.net/profile/Sayed-Qudrat-Hashimy/publication/363001201_Protection_of_Video_Games_under_Indian_and_the_United_States_of_America_Copyright_Law/links/63382ebfff870c55cef07ae7/Protection-of-Video-Games-under-Indian-and-the-United-States-of-America-Copyright-Law.pdf (Accessed: February 14, 2023).

INTRODUCTION

The international agreement that gives video games copyright protection is the Berne Convention for the Protection of Literary and Artistic Works (The Berne Convention of 1886). The broad definition of "Literary and Artistic Work" in Article 2 of the Convention, which reads as follows, might be used to illustrate this protection. The term "literary and artistic works" refers to all creations in the literary, scientific, and artistic fields, regardless of the mode or form in which they are expressed, including books, pamphlets, other writings, lectures, addresses, sermons, and similar works; dramatic or dramatico-musical works; choreographic works and entertainments in dumb show; musical compositions with or without words; and cinematographic works to which are assimilated works. The copyrightability of software is a relatively new field of IP law, and it has some similarities to the copyright protection of video games through copyright, patents, and trademarks.⁸ Since video games are not a fixed medium, it is challenging to define intellectual property protections. The video game industry is built on the nature of reusing game concepts from previous games to create new gameplay styles, but it is constrained by illegal direct cloning of existing games. One of the most satisfying aspects of media outlets is reflected in video games. With so much in doubt, it makes sense for the companies who create these video games to want to provide the best legal protection for their products. Copyright laws give video game developers the judicious right to reproduce, market, and switch off products based on their game's code, characters, images, and exchange.⁹ Understanding the material legal structure is necessary given the continued, dynamic growth of the video game industry and the growing revenue it generates, which is now equaling the scale of the film industry and outpacing the music industry in terms of overall revenue. This article focuses on examining the relevant national legislation in order to provide video game engineers with information on the main current valid openings for security of their rights and interests during the creation of a video game and its subsequent use and distribution.¹⁰

Today's society has a very strong presence of video games. One's life style and perspective on life can alter as a result of playing video games. It is significant to remember that there are

⁸ Ashcroft, Brian (July 15, 2021). "Retro Game Releases Could Get Needed Copyright Help In Japan". Kotaku. Retrieved July 15, 2021.

⁹ Hashimy, S.Q. (2022) Protection of video games under Indian and the United States of America copyright law, uomeprints. SSRN. Available at: <http://eprints.uni-mysore.ac.in/17385/> (Accessed: February 14, 2023).

¹⁰ Hashimy, S.Q. (2022) Protection of video games under Indian and the United States of America copyright law, SSRN. Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4138875 (Accessed: February 14, 2023).

several aspects of video game laws. Copyright law is used in the beginning stages of a video game's design, along with patent and trademark law. The concept of virtual reality is taken into account in the new feature of a video game law. The third aspect of video game law is the freedom of speech that is allowed as well as how important it is to balance minors' legal protections.¹¹

The current policy as a whole consists mostly of a few legal arrangements, scattered throughout mechanical and protected invention laws as well as competition laws. Additionally, these agreements propose ways to insure individual video game elements and the system on which they are played, but not the video game as a whole as a copyrighted work.¹² Additionally, it should be noted that the existing legal framework takes into account specific requirements for the occurrence, exercise, and protection of copyrights over computer programmes and different media components, as well as for the transfer of their creators' former ownership rights. However, these excellent legal rules represent a variety of approaches.¹³

Due to the lack of a clear legal framework directing the relationships between the creators of these copyrightable components and between them and the creators of the remaining compound components of the video game, as well as the absence of legal frameworks visualising the video game as an expansive and comprehensive copyrightable work, there are difficulties and differences in the process of identifying and rewarding a video game as a protected innovation.¹⁴

In order to comprehend video games' characteristics, particularly how they differ from other media, it is crucial to understand their conception and composition. The modern video game is a game that is played with a controller, such as a mouse and keyboard, that converts the data produced by a computer programme, like a video game, into images on a screen or other

¹¹ Hashimy, S.Q. (2022) The doctrine of copyright exhaustion in software under Indian Copyright Act: A cursory glance, SSRN. Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4138871 (Accessed: February 14, 2023).

¹² Sarkar, Samit (2012-12-17). "Working arcade cabinet of Meteors, Asteroids clone, unearthed three decades later". Polygon. Retrieved 2021-05-02.

¹³ Hashimy, S.Q. (2022) The doctrine of copyright exhaustion in software under Indian Copyright Act: A cursory glance, SSRN. Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4138871 (Accessed: February 14, 2023).

¹⁴ Hashimy, S.Q. (no date) The doctrine of copyright exhaustion in software under Indian copyright ..., THE DOCTRINE OFCOPYRIGHT EXHAUSTION IN SOFTWARE UNDER INDIAN COPYRIGHT ACT: A CURSORY GLANCE. University of Mysore . Available at: https://www.researchgate.net/profile/Sayed-Qudrat-Hashimy/publication/361367159_THE_DOCTRINE_OF_COPYRIGHT_EXHAUSTION_IN_SOFTWARE_UNDER_INDIAN_COPYRIGHT_ACT_A_CURSORY_GLANCE_Introduction/links/62ac5a68e1193368baa4b33a/THE-DOCTRINE-OF-COPYRIGHT-EXHAUSTION-IN-SOFTWARE-UNDER-INDIAN-COPYRIGHT-ACT-A-CURSORY-GLANCE-Introduction.pdf (Accessed: February 14, 2023).

display. From the previous definition, it is clear that a video game consists of different media components, such as different types of different media articulation in a digital design, such as images and sounds, text as orders, pathways, or score results, as well as a PC programme that manages different media works and allows players to interact with the different game elements.¹⁵

The video game is regarded as a complex work benefiting from copyright protection and incorporating elements that each may stand alone as a subject of copyright law, including PC projects and diverse media works. Therefore, existing copyrights established during the creation of another video game over its segments should be taken into account when a video game is grown, in this way dispersed, and used. True duplication of elements from another games is not planned. All video game developers are free to use part components for which copyright insurance isn't enforceable. It should also be taken into account how even those who are not directly involved in a videogame's development process could end up having an impact.¹⁶ As long as the final commitments are distinctive and creative, these players could be seen as the architects of their own obligations. Following up on similar copyright creations made by game customers requires an appropriately approved endorsement.¹⁷ In these virtually legitimate connections, this can be achieved through agreements for the use of their copyright-eligible work, which game customers can be asked to acknowledge when registering for access to the game. In addition to those compound components, which include distinct copyright objects, consideration should also be given to the fact that video games also include components that are not covered by copyright insurance, either because their term has expired or because they include real-world events, myths, and traditions.¹⁸

Publishers used to be responsible for securing (or providing) funding for games as well as for taking losses and, frequently, promoting them. These costs were typically significant and for AAA titles may reach tens of millions of dollars. However, a new generation of finance and distribution technology has evolved with the development of the Internet and the growth of

¹⁵ Hashimy, S.Q. (2022) The doctrine of copyright exhaustion in software under Indian Copyright Act: A cursory glance, uomeprints. IJLLR. Available at: <http://eprints.uni-mysore.ac.in/17388/> (Accessed: February 14, 2023).

¹⁶ Hashimy, S.Q. (2022) The doctrine of copyright exhaustion in software under Indian Copyright Act: A cursory glance, SSRN. Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4138871 (Accessed: February 14, 2023).

¹⁷ Lampros, Nicholas M. (2013). "Leveling Pains: Clone Gaming and the Changing Dynamics of an Industry". Berkeley Technology Law Journal. 28: 743.

¹⁸ Hashimy, S.Q. and Kimey, E.E. (2022) Protection of digital contents under Indian copyright law in the Lights of International Conventions, SSRN. Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4003072 (Accessed: February 14, 2023).

independent culture. Customers who are interested can directly support game development by buying the game in advance on websites like Kickstarter and Indiegogo. The expensive requirement for the production and distribution of physical game discs was eliminated by digital distributors like Steam and GOG.com. The industry has been able to depart from the standard of intellectual property rights by using these developments.

Today's society has a very strong presence of video games. One's life style and perspective on life can alter as a result of playing video games. It is significant to remember that there are several aspects of video game laws. Copyright law is used in the beginning stages of a video game's design, along with patent and trademark law. The concept of virtual reality is taken into account in the new feature of a video game law. The third aspect of video game law is the freedom of speech that is allowed as well as how important it is to balance minors' legal protections.¹⁹ Different parts of the software used to make video games have been copyrighted independently due to a variety of factors; some parts cannot be copyrighted at all because they are in the public domain or Creative Commons. In a recent interview with WIPO Magazine, Jia Wang, Deputy Director of the Technology Service Center at Tencent's Palo Alto, California, USA office, said "A game is both a technological and creative product, and IP safeguards both. The games we make contain a lot of intellectual property, from the narrative and the characters we design to the technical components that support and enhance the user experience." There are numerous websites that enable designers to "borrow" assets to use in-game. Different websites have different methods for allowing users access to and authorization to utilise these resources, which can range from a one-time fee to a cut of revenue (if the assets are used commercially). Large video game producers (like EA, Activision, or Sony) do not have this problem, but most of the materials produced by these independent businesses are only used once when they develop expansive, intricate worlds. This restricts the public's access to resources and assets. A common gripe of game creators is that assets frequently need to be reproduced in order to build a new game (or sequel by another firm or artist), which typically costs money.

A game developer can utilise a game engine as a framework to make games. They are made up of a software package with a wide range of parts, including rendering, audio, physics, and

¹⁹ Hashmy, S.Q. (no date) (PDF) protection of Digital Contents under Indian copyright law in the ... Available at:

https://www.researchgate.net/publication/358090020_PROTECTION_OF_DIGITAL_CONTENTS_UNDER_INDIAN_COPYRIGHT_LAW_IN_THE_LIGHTS_OF_INTERNATIONAL_CONVENTIONS (Accessed: February 14, 2023).

artificial intelligence engines. These engines are produced by businesses so that developers can make games (for free or for a fee). However, some designs or inactive background chores may happen in a specific method for each game created using a given engine due to its restrictions or other quirks. Regardless of how crucial to a game it may be, this specific feature is present in all games made with that engine and, therefore, not protected by copyright.²⁰

COPYRIGHT AND VIDEO TUSSLES

A video game typically falls under the category of an audiovisual work, which is permissible for corporations to create in the US. In this instance, the employer would be regarded as the author rather than the hired party or other contributors. American law only recognises moral rights for works of visual art as specified by Section 101 of the U.S. Copyright Act, in contrast to European law, which provides more robust "Moral Right Protections." Copyright is a form of intellectual property protection that grants a creative work's author(s) exclusive rights. A video game may be covered under the creative works protection. The existence of copyrights and their term may vary considerably between nations. They may also be subject to country-specific exceptions, such as the fair use doctrine in the United States.²¹

INDIAN COPYRIGHT

Video games are not specifically covered by the 1975 Indian Copyright Act. India, in contrast to the US, has not made public a list of the categories under which developers of video games should seek legal protection. India accepts corporate individuals to possess copyrights in accordance with Anglo-American custom. Chapter 1, Section 2(c) of the Copyrights Act in India provides a comprehensive definition of the term "Artistic Work," defining it as I a painting, a sculpture, a drawing, an engraving, or a photograph, whether or not any such work possesses artistic quality; (ii) a work of architecture; and (iii) any other work of artistic craftsmanship."²²

CONCLUSION

Regarding copyright protection in various nations and jurisdictions, WIPO has stated the following: "For certain nations, video games are primarily computer programmes due to the unique character of the works and their reliance on software. As opposed to other jurisdictions,

²⁰ Orland, Kyle (2012-10-03). "Legal landscape gets tougher for blatant game clones". Ars Technica. Retrieved 2021-03-09.

²¹ Grosheide, F. Willem; Roerdink, Herwin; Thomas, Karianne (2014). "Intellectual Property Protection for Video Games: A View from the European Union". *Journal of International Commercial Law and Technology*. 9 (1).

²² Li, Zihao (Spring 2019). "The Copyright Protection of Video Games from Reskinning in China - A Comparative Study on UK, US and China Approaches". *Tsinghua China Law Review*. 11 (2): 293–340.

where video games' complexity necessitates a distributive classification. Finally, only a small number of nations view video games as primarily audiovisual works. The idea-expression difference is a well-known Copyright theory that states that no one should have a monopoly on a larger idea while Copyright is intended to protect a creator's individual creation. According to the US Copyright Office, "Copyright does not protect a game's concept, name or title, or any of the ways to play it. Any concept, scheme, plan, technique, tool, or piece of trademarked literature used in creating, marketing, or engaging in a game is also not protected by copyright. The standard for copyrighted material that contains both copyrightable and public domain material was established in *Nichols v. Universal Pictures*.²³ The case outlines three actions that must be taken to confirm copying: The fact finder evaluates significant similarities between what is left of the allegedly infringed work and the allegedly infringing work after analysing the allegedly infringed work to identify the protected portions, removing the unprotected portions, and determining the protected portions.²⁴

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²⁴ McArthur, Stephen (2013-02-27). "Clone Wars: The Six Most Important Cases Every Game Developer Should Know". Gamasutra. Retrieved 2013-02-27.

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